

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Sensa Verogna, Plaintiff,)
v.) Case #: 1:20-cv-00536-SM
Twitter Inc., Defendant.)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S REPLY TO
TWITTER, INC.'S OBJECTION TO PLAINTIFFS MOTION TO STRIKE TWITTERS
MOTION TO DISMISS**

1. In this case, because Defendants' counsel had NOT been admitted to practice before this Court, Defendant's Motion and Memorandum ["Doc. 3"] are not properly before this Court, and therefore, should be stricken. Attorney Schwartz's act of submitting a motion before this Court certainly constitutes "the unauthorized practice of law." Attorney Schwartz violated New Hampshire's State prohibition against the unauthorized practice of law, NH RSA 311:7. See arguments, [Doc. 14].

2. As of June 1, 2020 neither Attorneys Eck or Schwarz had motioned the Court for a limited appearance under Local Rule 83.7, neither attorney had taken any preliminary steps towards being granting pro hac vice status for Attorney Schwartz, as neither attorney had motioned the Court for Pro Hac Vice to comply with Local Rule 83.2(b), nor had the Court decided on pro hac vice motion of Attorney Schwartz because there were none on record on or before June 1, 2020. Attorneys Eck or Schwarz also failed to file an affidavit with the Court to comply with Local Rule 83.2(b)(1) and did not pay any fee for admission as required by Local Rule 83.2(b)(1), nor had Attorney Schwartz complied with Local Rule N.H. Rule 5.5(c)(3) in performing services (submitting pleadings or answers to the Court) for which the forum requires pro hac vice

30 admission. The District Court rules regulating the practice of law, including admission pro hac
 31 vice, are mandatory and must be followed.

32 3. As of June 1, 2020 when Attorney Schwartz submitted Doc. 3 to the Court, she
 33 violated N.H. RSA 311:7 by practicing as an Attorney in Court, because she had not been admitted
 34 by the Court nor had she take the oath prescribed in N. H. RSA 311:6. Because of its illegality and
 35 because if Stricken it would be non-existent, Doc. 3 would therefore be non-conforming under
 36 Fed.R.Civ.P. 12(f). "There exists, in New Hampshire, a strong public policy against the
 37 unauthorized practice of law." State v. Settle, 124 N.H. 832, 835 (1984) (citing Bilodeau v. Antal,
 38 123 N.H. 39, 43 (1983)). See Kamasinski v Fitzgerald, et al. United States District Court of New
 39 Hampshire, CV-03-205-M (2003) (enjoined by the Court for engaging in the unauthorized practice
 40 of law for filing an appearance on behalf of any litigant in a state court or state administrative
 41 proceeding and defining unauthorized practice of law as; [The] representation of another entity or
 42 person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute
 43 resolution process or in an administrative adjudicative proceeding in which legal pleadings are
 44 filed or a record is established as the basis for judicial review.)

45 4. The Plaintiff is warranted a default and judgment by the Clerk [Docs. 7, 8], and
 46 continues to oppose Attorney Julie E. Schwartz's admission *pro hac vice* [Doc. 12], Plaintiff's
 47 argument for striking Defendant's Doc. 3, is that Attorney Schwartz "appeared" AND "presented"
 48 Defendant's motion and Memorandum illegally [Doc. 14 @ 19] and [Doc. 14-1, at 4, 5 and 28.],
 49 and that Doc. 3 is "scandalous," [Doc. 14, ¶ 1] "illegal," [Id., ¶ 4], "detract[ion] from the dignity
 50 of the court," [Id.] and "prejudicial" to the Plaintiff[*Id.*, ¶ 7.]

51 5. Attorney Eck's signature on the Doc. 3 does not change the fact that the motion
 52 was presented by and on behalf of the Defendant Corporation by an Attorney was not authorized

53 to practice law before this Court. Attorney Schwartz's absence of her signature is moot, as she
54 still "presented" Doc. 3 to the Court by including her name onto the document while advocating
55 and representing Twitter the Defendant in a responsive pleading before the Court.

56 6. Pertinent here, N.H. Rule 5.5 in *full* context is;

57 5.5(a) "A lawyer shall not practice law in a jurisdiction in violation of the regulation
58 of the legal profession in that jurisdiction, or assist another in doing so."

59 5.5(c) "A lawyer admitted in another United States jurisdiction.. may provide legal
60 services on a temporary basis in this jurisdiction that...(1) are undertaken in association with a
61 lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
62 AND (2) are in.. a... proceeding before a tribunal in this or another jurisdiction, if the lawyer, or
63 a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or
64 reasonably expects to be so authorized; AND (3) are in or reasonably related to a pending or
65 potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another
66 jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a
67 jurisdiction in which the lawyer is admitted to practice and are not services for which the forum
68 requires pro hac vice admission; OR (4) are not within paragraphs (c)(2) or (c)(3) and arise out of
69 or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted
70 to practice.

71 7. Therefore, under N.H. Rule 5.5, an out of State Attorney.... in good standing...
72 may provide services.. which do not require pro hac vice admission. Therefore, submitting and
73 appearing before the court by an Attorney who had not been granted pro hac vice status prior to
74 the filing is practicing the "unauthorized practice of law" under N.H. RSA 311:7.

75 8. Black's Law Dictionary, defines "[a]pppearance by attorney" as "[a]n act of an
 76 attorney in prosecuting an action on behalf of his client. Document filed in court in which attorney
 77 sets forth fact that he is representing a party to the action." Post, at 40 (quoting Black's Law
 78 Dictionary 97 (6th ed. 1990)).

79 9. The act of appearing in court to assert or defend claims on behalf of another lies at
 80 the very heart of the practice of law. See § 484.010.1, RSMo 2000 (the practice of law includes
 81 the "appearance as an advocate in a representative capacity ... in connection with proceedings
 82 pending or prospective before any court of record").

83 10. Even though this Court is the "sole arbiter" of what constitutes the practice of law,
 84 it "has used these statutory definitions ... as a reference point for determining the scope of the
 85 practice of law." Hargis v. JLB Corp., 357 S.W.3d 574, 578 (Mo. banc 2011).

86 11. The Local Rules of Practice of the United States District Court for the District of
 87 Nevada, which are similar to New Hampshire's Local Rules, require that in order to be eligible to
 88 practice before the District Court, an attorney must be admitted to practice before the Supreme
 89 Court of Nevada or, if the attorney is appearing pro hac vice, that he or she be a member in good
 90 standing and eligible to practice before the bar of any jurisdiction in the United States ... [; and (2)]
 91 Nevada Revised Statute (NRS) 7.285[, which] makes it unlawful for a person to practice law in
 92 Nevada if the person is not an active member of the State Bar of Nevada or otherwise authorized
 93 to practice law in Nevada. See D. Nev. L.R. IA 10-1, 10-2; Nev. Rev. Stat. § 7.285.[2] United
 94 States v. Kimsey 668 F.3d 691, 9th Cir. (2012).

95 12. "[A] district court can only depart from the strictures of its own local procedural
 96 rules where "it has a sound rationale for doing so". United States v. Eleven Vehicles, Their Equip.
 97 & Accessories, 200 F.3d 203, 215 (3d Cir. 2000). Wehmer, 591 F.3d 666, 669 (3d Cir. 2010)

98 (Rule 59); Budget Blinds, Inc. v. White, 536 F.3d 244 , 251 (3d Cir. 2008) (Rule 60). “[A] court
99 abuses its discretion when its ruling is founded on an error of law or a misapplication of law to the
100 facts.” Montrose Med. Grp. Participating Sav. Plan v. Bulger, 243 F.3d 773, 780 (3d Cir. 2001)
101 (quotation marks and citation omitted). Although judges should be independent, they must comply
102 with the law and should comply with this Code. Canon 1: A Judge Should Uphold the Integrity
103 and Independence of the Judiciary. Codes Canon 1 (“A judge should participate in establishing,
104 maintaining, and enforcing high standards of conduct, and should personally observe those
105 standards, so that the integrity and independence of the judiciary may be preserved.”) Boehner,
106 John A. v. McDermott, James A. (D.C. Cir. 2007) That action does not speak to the judicial fairness
107 required of all judges under Canons 1 and 2 of the Code of Conduct for United States Judges. See
108 Moran v. Clarke, 309 F.3d 516, 518 (8th Cir. 2002) (en banc) (per curiam) (referring to the “solemn
109 obligation” of every federal judge “to not only uphold the integrity of the judiciary, but also to act
110 always in a manner that promotes public confidence in the integrity and impartiality of the
111 judiciary”). United States v. Aaron Webster 484 F.3d 573 (8th Cir. 2016). Unbiased, impartial
112 adjudicators are the cornerstone of any system of justice worthy of the label. And because
113 “[d]eference to the judgments and rulings of courts depends upon public confidence in the
114 integrity and independence of judges,” jurists must avoid even the appearance of partiality. United
115 States v. Microsoft Corp., 253 F.3d 34 , 115 (D.C. Cir. 2001) (quoting Code of Conduct for United
116 States Judges, Canon 1 cmt. (2000)). “Such a stringent rule,” to be sure, “may sometimes bar trial
117 by judges who have no actual bias and who would do their very best to weigh the scales of justice
118 equally between contending parties.” In re Murchison, 349 U.S. 133, 136 (1955). But ““to perform
119 its high function in the best way,”” the Supreme Court has emphasized, ““justice must satisfy the

120 appearance of justice.”” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988)
 121 (quoting *In re Murchison*, 349 U.S. at 136).

122 13. Faithfulness to the rule of law allows us to live in a civil society in which everyone’s
 123 rights are respected; where each of us is guaranteed liberty and equality of opportunity. As citizens
 124 we respect the laws because they are clearly communicated and fairly enforced. Everyone is held
 125 accountable to the same laws, and those laws protect our fundamental rights. This is the foundation
 126 of the rule of law in the United States. In the United States, we have written laws in place to help
 127 us settle disagreements peacefully through a fair system of justice. It is the job of the courts to
 128 interpret the laws. It is up to judges and juries to decide if we have indeed broken the law. Chief
 129 Justice Rehnquist called judicial independence “one of the crown jewels of our system of
 130 government today.” the Framers enshrined in the federal Constitution: whether elected or
 131 appointed, a judge must be responsive only to the laws, to judicial precedents, and to federal and
 132 state constitutions. <https://www.americanbar.org/groups/litigation/initiatives/committee-on-american-judicial-system/in-the-news/threats-to-judicial-independence-and-rule-of-law/>

134 14. Many Courts have voided the filings of an out-of-state attorney who did not secure
 135 pro hac vice admission by the Court prior to submitting filings, answers or arguments to the Court.
 136 See, e.g., *Carlson v. Workforce Safety & Ins.*, 765 N.W.2d 691 (Neb. 2009) (filing of a motion for
 137 reconsideration before an administrative agency by an out-of-state lawyer who did not secure pro
 138 hac vice admission within the time required by court rule was treated as a nullity); “When our rules
 139 for the unauthorized practice of law and for pro hac vice admission are construed together in the
 140 context of proceedings before WSI and the requirement that a corporation may not be represented
 141 by a non-attorney agent in a legal proceeding, we conclude GMR’s nonresident attorneys’ activities
 142 in making a request for reconsideration, filing a legal brief, and being designated as counsel in the

143 WSI proceeding were not protected by the safe harbor provisions of N.D.R. Prof. Conduct 5.5(b).
144 GMR's nonresident attorneys were required to file a motion for pro hac vice admission under
145 Admission to Practice R. 3(A) within 45 days of their appearance in this agency proceeding.
146 Because GMR's nonresident attorneys failed to timely comply with the requirements for pro hac
147 vice admission, we conclude GMR's request for reconsideration by its non-attorney agents was
148 void. See Wetzel, 2005 ND 190, ¶¶ 12-13, 705 N.W.2d 836; Strong, 23 S.W.3d at 241-42. See
149 also Mitchell v. Progressive Ins. Co., 965 So. 2d 679 (Miss. 2007) (filing of complaint by out-of-
150 state lawyer who had not secured pro hac vice status was a nullity and its filing did not toll the
151 statute or limitations); Preston v. Univ. of Ark. for Med. Scis., 128 S.W.3d 430 (Ark. 2003)
152 (same). The clear intent of Rule XIV is that the written statement be submitted before the attorneys
153 engage in the practice of law in Arkansas. Where a party not licensed to practice law in this state
154 attempts to represent the interests of others by submitting himself or herself to jurisdiction of a
155 court, those actions such as the filing of pleadings, are rendered a nullity. See also, Davenport v.
156 Lee, 348 Ark. 148, 72 S.W.3d 85 (2002) Davenport, 348 Ark. at 164, 72 S.W.3d at 94. We further
157 concluded that "the original complaint, as a nullity never existed, and thus, an amended complaint
158 cannot relate back to something that never existed, nor can a nonexistent complaint be corrected."
159 Id. We hold that the same is true for the case before us. The Davenport case governs our decision,
160 and the Prestons' complaint is a nullity. See, e.g., In re Jackman, 761 A.2d 1103 (N.J. 2000) (lawyer
161 denied admission to the bar for a period of time due to previous unlicensed practice in the state).
162 See, e.g., Palmore v. City of Pac., 393 S.W.3d 657, 664 (Mo. App. 2013) (because "application for
163 trial de novo was not filed by an attorney, its application was void ab initio"); 6226 Northwood
164 Condo. Ass'n v. Dwyer, 330 S.W.3d 504, 506 (Mo. App. 2010) ("where a representative engages
165 in the unauthorized practice of law, the proper remedy is to dismiss the cause or treat the actions

166 taken by the representative as a nullity") Schenberg v. Bitzmart, Inc., 178 S.W.3d 543, 544 (Mo.
 167 App. 2005) ("normal effect of a representative's unauthorized practice of law is to dismiss the
 168 cause or treat the particular actions taken by the representative as a nullity"); Joseph Sansone Co.
 169 v. Bay View Golf Course, 97 S.W.3d 531, 532 (Mo. App. 2003) ("action taken on behalf of a
 170 corporation by a non-attorney representative may be void and can result in dismissal"); Strong v.
 171 Gilster Mary Lee Corp., 23 S.W.3d 234, 241 (Mo. App. 2000) (filings "by a person unauthorized
 172 to practice law are a 'nullity,' and hence may properly be dismissed"); Sellars By & Through
 173 Booth v. Denney, 945 S.W.2d 63, 66 (Mo. App. 1997) (because an unlicensed individual may not
 174 represent another person in court, "the notice of appeal and brief ... are nullities"); Stamatiou v.
 175 El Greco Studios, Inc., 935 S.W.2d 701, 702 (Mo. App. 1996) (pleading filed by corporate officer
 176 who was not a licensed attorney "was not properly before the circuit court ... and the circuit court
 177 should have dismissed it without considering its allegations"); Risbeck v. Bond, 885 S.W.2d 749,
 178 750 (Mo. App. 1994) (where corporation was "represented by a person unauthorized to do so, the
 179 trial court properly dismissed the petition"); Show-Me Restoration Servs. v. Harlan, 778 S.W.2d
 180 350, 351 (Mo. App. 1989) (papers stricken because "filed by plaintiff's vice president and co-
 181 owner [who is] not an attorney").

182 15. In this case, because Defendants' counsel had NOT been admitted to practice before
 183 this Court, Defendant's Motion and Memorandum ["Doc. 3"] are not properly before this Court,
 184 and therefore, should be stricken. Attorney Schwartz's act of submitting a motion before this Court
 185 certainly constitutes "the practice of law." And because Attorney Schwartz violated New
 186 Hampshire's State prohibition against the unauthorized practice of law, NH RSA 311:7, violated
 187 Local Rule 83.1 [Doc 14. @ 16], Local Rule 83.7, [Doc. 14. @ 17], Doc. 3 is non-conforming
 188 under Fed.R.Civ.P. 12(f), by bringing a motion despite the fact that she is not admitted to practice

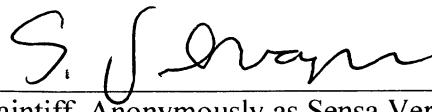
189 before this Court, and this Court should hold that Defendant's Motion and Memorandum [Doc. 3],
 190 be stricken from the record. [Doc. 14 @ 28]. Spanos v. Skouras Theatres Corp., 364 F.2d 161, 165
 191 (2d Cir.1965) (Attorney had not been admitted to practice before this Court pro hac vice, id. at
 192 167), ("unlawful practice includes counseling as well as court appearances.... [a]nd it extends to
 193 advice involving federal law as well as New York law....") (citations omitted), cert. denied, 385
 194 U.S. 987, 87 S. Ct. 597, 17 L. Ed. 2d 448 (1966); In re Roel, 3 N.Y.2d 224, 165 N.Y.S.2d 31, 35,
 195 144 N.E.2d 24, 27 (1957) ("Thus persons or corporations engaging in the practice of Federal law
 196 have been found violating the statute [that prohibits the unauthorized practice of law.]") (citations
 197 omitted); see also In re Peterson, 163 B.R. 665, 673 (Bankr.1994) ("The regulation of the right to
 198 practice law generally, unless otherwise prescribed by Congress, is traditionally left to the states.")
 199 (citations omitted). United States v. International Bhd. of Teamsters, et al., 911 F.Supp. at 754.
 200 Erbacci, Cerone, and Moriarty, Ltd. v. United States, 923 F. Supp. 482 (S.D.N.Y. 1996).

201 16. For the Court to rule in the Defendant's favor, it would have no sound rationale for
 202 doing so as it would have to bulldoze a New Hampshire State Statute, ignore several Federal Rules
 203 of Civil Procedure and the Local Rules of this very Court. The Court, in this instance, has no
 204 discretion, as it had no discretion over Attorney Schwartz when she filed Doc. 3 to the Court as
 205 Attorney Eck had not yet made any motion for Pro Hac Vice and to date, Attorney Schwartz has
 206 still not been admitted to this Court. Similarly, in this instance, the Court has no discretion in the
 207 findings of fact as Attorney Schwartz clearly presented a pleading to the Court on behalf of a
 208 corporate client, when she was not so authorized to do so. Fairness and the appearance of justice,
 209 in this instance, should be to follow and adhere to the Laws and rules as written.

210 17. For the reasons stated herein, and in the supporting motion, this memorandum of
 211 law, and the arguments set forth in [Doc. 14]. this Court must declare Doc. 3 to be prejudicial to

212 the plaintiff and in violation of N.H. RSA 311:7, and therefore scandalous, non-existent and
213 therefore, must be stricken from the record in its entirety, and therefore an insufficient defense
214 under Fed. R. Civ. P. 12(f).

215 Respectfully,

216 
217 _____
218 /s/ Plaintiff, Anonymously as Sensa Verogna
219 SensaVerogna@gmail.com

220

221 **CERTIFICATE OF SERVICE**

222 I hereby certify that on this 2nd day of July 2020, the foregoing document was made upon the
223 Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie E.
224 Schwartz, Esq., JSchwartz@perkinscoie.com

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